



N A R U C
National Association of Regulatory Utility Commissioners

November 6, 2003

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, SW Portals II Building
Washington, D.C. 20544

RE: NARUC Opposition to Delay/Waivers re: Existing Wireline LNP Obligations

Written Ex Parte – Two Originals Filed in the Proceeding Captioned:

In the Matter of Telephone Number Portability, CC Docket No. 95-116

Wireline Competition Bureau Seeks Comment on Requests for Waiver or Temporary Extension of the Requirement to Provide Local Number Portability to CMRS Providers, Public Notice, DA 03-3014 (rel. Oct. 2, 2003).

Dear Chairman Powell,

As I'm sure you are aware, for the past six years the National Association of Regulatory Utility Commissioners has been a strong advocate for number conservation efforts and competition across the nation. We have consistently supported the implementation of wireless local number portability (LNP) because of the number conservation benefits associated with number pooling and the related impact on competition. Now that thousand block pooling has been implemented by wireless carriers, we continue to believe that implementation of unrestricted LNP will benefit the consumers through increased choice of provider and, consequently, increased pricing competition. As NARUC's November 2002 Resolution argues, any further delay of the wireless LNP deadline "...would take effect to the detriment of promoting local competition *between wireline and wireless carriers* as customers will be unable to retain their telephone numbers when switching between wireline and wireless service providers."

We appreciate the FCC's strong stance to date on the upcoming LNP deadline – including the recent reaffirmation of the requirement for unrestricted porting as of the November 2003 deadline. However, the flurry of recent wireline/local exchange company (LEC) ex partes and waiver requests have raised concerns. Now that the commission has responded to the

questions requiring immediate guidance for wireless-to-wireless LNP,¹ there is an increasing clamor by the wireline industry, for a variety of reasons, to delay or avoid existing LNP duties where the carrier requesting LNP is a wireless carrier.

One recent example, the series of Petitions (collectively, “Petitions”) filed September 24, 2003, by Franklin Telephone Company, Inc., Inter-Community Telephone Company, LLC, and North Central Telephone Cooperative, Inc. (collectively, the “Companies”) seeking a waiver of the Companies’ obligations to provide LNP to requesting Commercial Mobile Radio Service (CMRS) providers.²

NARUC believes the Petitions, as well as other wireline/LEC claims that delay or suspension of LNP requirements with respect to wireline-to-wireless portability, are either facially and procedurally deficient and should be denied.

Congress Expected Section 251(f) Claims to Be Resolved by the States

In addition to their request for waiver of the LNP requirement, the Companies point out that they qualify as “two percent carriers” under Section 251(f) of the Act, apparently suggesting that section give weight to their request for exemption from the LNP requirement. Section 251(f) provides for exemption from 251(c) requirements (for rural telephone companies) and 251(b) (where LNP is imposed on LECs) and (c) requirements for “two percent carriers”. NARUC believes the FCC should not consider these claims or the carriers’ potential status as “two percent carriers” in the context of these waiver requests.

Any claims/reliance for exemption under section 251(f) are more properly directed to State commissions under section 251(f). That section, by its own terms, controls whether a “two percent carrier” may receive an exemption from the 251(b)(2) “duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.” Congress specified that the States handle section 251(f) inquiries. The carriers themselves recognize this Congressional imprimatur and have filed their requests in that forum.³ Any State commission has 180 days to rule on such Section 251 (f) waiver requests.

¹ See, Memorandum Opinion and Order, *In the Matter of Telephone Number Portability -- Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116 (2003 FCC LEXIS 5487) (FCC 03-237) (rel. October 3, 2003)

² See, *Wireline Competition Bureau Seeks Comment on Requests for Waiver or Temporary Extension of the Requirement to Provide Local Number Portability to CMRS Providers*, Public Notice, DA 03-3014 (rel. Oct. 2, 2003).

³ See, e.g., North Carolina: Alliance of North Carolina Telephone Companies (Sept. 10, 2003). Ohio: Orwell Telephone Company (Sept. 18, 2003); Columbus Grove Telephone Company (Sept. 18, 2003). Oregon: SCS Communications and Security Inc. (Sept. 23, 2003); Oregon Telecommunications Association (Sept. 23, 2003). Texas: Nortex Telcom, L.L.C. (Oct. 14, 2003); W.T. Services, Inc. (Oct. 14, 2003); Muenster Telephone Corporation of Texas d/b/a Nortex Communications (Oct. 13, 2003); Peoples Telephone Cooperative, Inc. (Oct. 13, 2003); Comanche County Telephone Company, Inc. (Oct. 13, 2003); Cumby Telephone Cooperative, Inc. (Oct. 13, 2003); Eastex Telephone Cooperative, Inc. (Oct. 13, 2003); Brazos Telephone Cooperative, Inc. (Oct. 13, 2003); South Plains Telephone Cooperative, Inc. (Oct. 13, 2003); Mid-Plains Rural Telephone Cooperative, Inc. (Oct. 13, 2003); Colorado Valley Telephone Cooperative, Inc. (Oct. 13, 2003); West Plains Telecommunications, Inc. (Oct. 13, 2003); West Texas Rural Telephone Cooperative, Inc. (Oct. 13, 2003); Five Area Telephone Cooperative,

Significantly, under Section 251(f), the states may, *but are not required*, to suspend compliance with the existing LNP rules during the pendency of any petition.

Assuming, *arguendo*, the petitions' Section 251 claims are properly before the FCC, even the most exacting examination of the pleadings fails to uncover the required showing of "good cause needed as the basis for a generic FCC waiver of LNP obligations.

The Companies, and related local exchange carrier ex parte filings, fail to demonstrate any good reason for delaying wireline LNP responsibilities.

Neither the Companies' petition, nor the separate but related plethora of LEC ex partes, provide anything to rebut the FCC's record findings that LNP is necessary to protect all consumers, including those that happen to live in rural America.⁴ Nor do they provide any reasons for waiver or temporary delay.

All local exchange carriers, including the Companies and other LECs, have been on notice since 1997 that they may need to support LNP within 6 months of request from a competing carrier, and since July 2002 that wireless carriers would be offering LNP in November 2003. There is no justification for carriers to claim that they need more time to get ready for this long-standing mandate. The FCC should dismiss the Companies requests and refuse to allow further delay by other LECs.

Even if the FCC chooses to consider the Companies status as Section 251(f) "two percent carriers" as relevant to the waiver inquiry, the Companies' petitions fail to meet the "high hurdle" of demonstrating the "good cause" required by the FCC's rules.⁵ First they claim requiring them to comply with the LNP requirement will be "unduly burdensome" and that the public interest would be disserved by imposing the costs of LNP on their customers.⁶ Exhibit 1 of all three Petitions provide the Companies' line counts as well as their estimates of their costs to implement LNP. Dividing the implementation cost over the subscriber base, and assuming recovery of the cost over only one year, the per-customer monthly cost is only approximately \$0.48 for Inter-Community, \$0.25 for North Central, and \$0.30 for Franklin. If the costs were spread over a period longer than one year, the per-customer monthly cost would be even lower. This is comparable to the record data of the costs the wireless industry faced to implement LNP and, in that case, the Commission found that the "consumer benefits of LNP justify imposing these costs."⁷

Inc. (Oct. 13, 2003); Wes-Tex Telephone Cooperative, Inc. (Oct. 13, 2003); ENMR Telephone Cooperative, Inc. (Oct. 13, 2003); Santa Rosa Telephone Cooperative Washington: Washington Independent Telephone Association (Sept. 24, 2003).

⁴ Verizon Wireless' Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, Memorandum Opinion & Order, 17 FCC Rcd 14972 (2002) ("Verizon Wireless Forbearance Order").

⁵ 47 C.F.R. § 1.3. *See*, Numbering Resource Optimization, Petition of TeleCorp PCS, Inc., Order, 16 FCC Rcd 19535, 19536 (2001) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)). (noting an applicant for waiver faces "a high hurdle even at the starting gate...")

⁶ Petitions at 2.

⁷ Verizon Wireless Forbearance Order at ¶ 29.

The Companies also claim that implementing LNP presents logistical difficulties and that additional time is needed. However, again the petitions fail to present compelling evidence to support these claims. The petitions only include the Companies' bare claims that they have contacted their respective switch vendors and to have been informed that deployment would take six months.⁸ As noted earlier, the ILECs have been aware of the deadlines for well over six months and each of the Companies acknowledges that they received a BFR more than 6 months in advance of the upcoming November deadline.

Finally, the Companies claim that the public interest would not be served by requiring them to implement LNP because there is no evidence that their customers wish to replace their wireline service with wireless service. The relevant question, however, is not whether the LEC customers wish to replace their wireline service with wireless, but rather whether they wish to port their wireline numbers to wireless carriers. The Commission consistently has concluded that carrier requests for LNP are the best evidence of demand for portability.⁹ The Companies have received proper BFRs from wireless carriers, and they should be required to honor them.

No LEC has raised an Issue that Justifies Further Delay of Wireline-to-Wireless Portability

The Companies' petitions referenced in the Wireline Competition Bureau's October notice are not the only LEC calls for delay of wireline-to-wireless LNP. Qwest and other wireline LECs have argued that additional time is needed. Carriers have known about the wireless LNP requirement for years and should have been working to upgrade their systems to enable inter-modal porting. Indeed, under the FCC's rules, LECs have been required to port to numbers to all carriers, including wireless, since 1997. It seems odd, to say the least, that at this point they would be claiming they've not made the necessary capital investments. The recent Verizon Wireless to Verizon landline arrangements clearly indicate that timely compliance is possible.¹⁰ Moreover, the FCC orders already provide cost-recovery mechanisms, which are being utilized for regulated LECs. Finally, while there may be some additional issues that could require additional examination, there are no outstanding issues that justify further delay.

Rates center issues, which are a prominent and frequent feature of these LEC arguments, are a good example. From a policy perspective, regulators may ultimately favor some form of

⁸ Significantly, the Companies all admit that they received their bona fide requests ("BFRs") from the wireless carriers six months before November 24. Even if the FCC were to accept as fact, the carriers' unsubstantiated claims, the petitions on their face at a minimum, suggest if the Companies begun LNP implementation on a timely basis, there would be no need for a waiver and that some enforcement action might be warranted.

⁹ See, e.g., Numbering Resource Optimization, Fourth Report & Order, 18 FCC Rcd 12472, 12476 (2003).

¹⁰ See, e.g., VERIZON COMPANIES SIGN ACCORD TO FACILITATE NUMBER PORTING (TR Daily September 22, 2003) Verizon Communications, Inc., and Verizon Wireless today said they had signed an agreement that allows subscribers of the two companies to switch service to the other and keep their telephone numbers. "The agreement paves the way for similar landline-to-wireless and wireless-to-landline porting agreements between the nation's wireless and landline phone companies," the companies said. They added that their local number portability (LNP) agreement addressed "significant issues that have hindered the ability of other wireline and wireless service providers to reach porting agreements." Under the agreement, the companies say they will "not deny or delay a customer's request to port from one carrier to the other simply because the customer owes a fee for terminating service earlier than an existing service contract might permit, or because there is a balance due on an account."

true “location portability” for all numbers. However, near term, practically, it is unlikely any consumer is going to want to “port” his or her pre-existing wireless number to a wireline provider. Indeed, logically, the most likely candidate for such a “port” is a consumer that has tried taking his or her wireline number to a wireless carrier (post November 24), found the service unsatisfactory and wants to move the number back. These ports cause no problems.

Porting of all wireline numbers to within any particular wireless providers’ local calling area is technically feasible today.¹¹ The same network infrastructure being used for pooling (LRN based routing) can be used for porting regardless of the rate center designation.¹² The FCC should require such porting.

There are issues outstanding concerning intrastate wireless-to-wireline ports. The circumstances under which these types of ports are permissible will vary from state-to-state. Because the conditions upon which particular prefixes have been “grandfathered” do vary, NARUC respectfully suggests that, in any order, the FCC should affirm that, in the first instance, the States are the appropriate authority to address the circumstances under which such ports may or may not be permissible.

Conclusion

NARUC agrees with the FCC that LNP will promote greater consumer choice, enhance competition, and strengthen our ability to promote number conservation. We believe the Companies that filed specific waiver requests have failed to show good cause for a waiver, and that section 251(f) is not relevant to the FCC’s examination of their pleadings. We also believe that other LECs have not raised any issue that requires further delay of the existing LNP requirements for wireline to wireless LNP.

We urge you and your fellow commissioners to stand firmly by your commitment to implement LNP in November 2003.

As always, if you have any questions about this filing, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Sincerely,

¹¹ No one has suggested ports across LATAs, NPAs, or State boundaries are included within this category of permissible and technically feasible transactions, and, except as discussed, *supra*, NARUC has not yet taken a position on whether such ports should be allowed.

¹² See, e.g., *October 8, 2003 Ex Parte from Sprint’s Luisa Lancentti to the FCC’s John Rogovin, Bill Maher, and John Muletta* page 6: “...there is, moreover, no reason for the commission to consider a new rulemaking proceeding. Quest and its predecessors have never had difficulty rating and routing land-to-mobile calls in the past and wireless LNP does not change current routing and rating arrangements in any way. (footnote omitted).... Again, and as Sprint explained in its August 18th letter, call routing and rating does not change when calls are made to ported numbers instead of non-ported numbers.”

James Bradford Ramsay
NARUC General Counsel